

# CANVASSING



# KANSAS

AN UPDATE ON ELECTION NEWS IN KANSAS

## Thornburgh Attends Signing of Federal Election Reform Legislation

Everyone with an interest in elections has been watching the long path taken by the federal election reform legislation in Congress during the past two years. Different bills were passed by the House and Senate last year, and much of this year was spent in conference committee working out a compromise bill (see *Canvassing Kansas*, September 2002, p. 1).

Finally a compromise bill was produced, which the House of Representatives passed 357 – 48 on October 10 and the Senate passed 92 – 2 on October 16. The legislation is referred to as the Help America Vote Act of 2002.

President Bush had promised quick action, and a signing ceremony was held on October 29, 2002 in the Eisenhower

Executive Office Building next door to the White House. Kansas Secretary of State Ron Thornburgh received an invitation to fill one of two places allotted to the National Association of Secretaries of State at the signing ceremony. The invitation was extended to Thornburgh because he served as president of NASS in 2001 during the critical period when the legislation was drafted. As NASS president and a former state election director, he wielded considerable influence in designing the plan to address inadequacies of the electoral system as evidenced by the 2000 election while at the same time making the changes easier to administer for election officials.

It was a rare opportunity for

Thornburgh to witness history in the making. He said, “Now that Congress has passed the legislation, the focus will shift to implementing these groundbreaking changes. I will work with Congress and my colleagues to fully fund these changes and to ensure fair and accurate elections across the U.S.”

Representative Bob Ney (R-Ohio), chairman of the House Committee on Administration and chief architect and sponsor of the bill in the House, commended Thornburgh for his involvement. “Secretary of State Thornburgh played a critical role in bringing together groups

Please see **Reform**, page 3

## 2002 General Election Wrap-up

The November 5, 2002 general election brought the usual excitement of a statewide election. Hotly contested races, last-minute campaign blitzes and shifting polling numbers created their share of excitement, but there was also an increased awareness and scrutiny of the voting, tabulating and canvassing processes, largely brought about by the incredibly close presidential race of 2000. The media and the public in general have focused their attention more closely on the electoral process.

Part of the increased attention came in the form of authorized poll agents. Statewide, there was an increase in the amount of poll agent activity as campaigns, candidates and political parties realized this is the prescribed method for observing the casting and counting of ballots. This was especially true in the race

for Attorney General, where both sides appointed numerous poll agents to fan out across the state in as many counties as possible to observe the canvass proceedings.

One of the factors making the 2002 election season special was redistricting. The once-a-decade process of redrawing district lines for U.S. House of Representatives, Kansas House of Representatives, Kansas Senate, and Kansas State Board of Education always creates extra work for election officers and some confusion among voters as they sort out the new races they will be voting on. This year the planning process for the primary election was further disrupted by a federal lawsuit challenging the redistricting plan passed by the Legislature (see *Canvassing Kansas*, September 2002, p. 4).

Please see **Wrap**, page 2

### CANVASSING KANSAS

#### IN THIS ISSUE

- 2 Voting Integrity Effort Launched by SOS and DOJ
- 3 Holiday SOS Office Schedule
- 3 Hartenbower Reports on Macedonia Election
- 4 Statewide Recount Narrowly Averted in AG Race
- 4 Ensley's Election Eatin's
- 5 Election Standards Pass Test
- 5 Thornburgh Sued by Natural Law Party
- 6 Six Counties Produce Spanish Voting Materials
- 6 Clarification of Voter History on Registration File

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## Voting Integrity Effort Launched by Secretary of State and Department of Justice

On Wednesday, October 30, 2002, Kansas Secretary of State Ron Thornburgh and U.S. Attorney Eric Melgren held a joint press conference to announce a new initiative to promote voting integrity. The goal of the program is to ensure public confidence in the integrity of the election process by protecting voting rights and prosecuting election crimes.

Earlier, U.S. Attorney General John Ashcroft had committed the resources of the Department of Justice to the project and had instructed U.S. Attorneys nationwide to designate District Election Officers from their respective areas to help guarantee access, honesty and integrity at the polls on election day. U.S. Attorneys also may bring the Federal Bureau of Investigation into instances of possible election fraud or other illegal behavior. Eric Melgren, U.S. Attorney for the district of Kansas, appointed Leon Patton of the Kansas City office as District Election Officer.

Secretary of State Ron Thornburgh committed the efforts of his staff to help coordinate the effort, and the office of Kansas Attorney General Carla Stovall agreed to help and, if needed, to commit the resources of the Kansas Bureau of Investigation.

During the press conference Melgren and Thornburgh provided the public with telephone numbers for citizens to call to report suspected cases of crimes or denial of voting rights.

"The detection of election fraud depends in large part on the watchfulness and cooperation of the American electorate. It is imperative that those who have been asked to participate in questionable election practices, or who have observed or have specific information regarding electoral corruption, make that information available immediately to my office or to the FBI. The cooperation of this country's citizens in helping to protect the sanctity of the ballot box is crucial. It is also appreciated," Melgren said.

"This is in no way suggesting that we anticipate problems with the state of Kansas election officials. They are competent professionals in whom we have the highest confidence. Instead, the United States Attorney's office will team up with state election officials to receive and investigate any citizen complaints of possible voting rights violations."

Added Thornburgh, "Make no mistake, Kansas is no Florida and this new partnership ensures we never will be. It should be easier to vote and harder to cheat. If any Kansan has a problem or question between now and election day, pick up the phone and let us know."

During and after election day there were a number of reports made by citizens concerned about possible abuses. Officials are reviewing the reports to determine if prosecutable offenses occurred and, if so, whether a state or federal level prosecution is more appropriate.

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### Wrap

From page 1

In several ways this was an election of firsts: it was the first time in many years that some counties were required to produce ballots and voting materials in Spanish, it was the first general election conducted using the new Kansas Election Standards, and it was the first time in many decades where we came to the brink of a statewide recount, in the Attorney General race.

Voter turnout was average. After a disappointing 25.8% turnout in the primary election (recognizing that voters who are not Democrats or Republicans do not participate in the primary), the general election turnout returned to a more normal level. Here is how this election's turnout compares to the previous two gubernatorial elections:

<u>Year</u>	<u># Registered</u>	<u># Voting</u>	<u>% Voting</u>
2002	1,615,333	832,208	52
1998	1,513,685	751,505	50
1994	1,273,648	836,251	64

Turnout this year was very close to expectations. On November 1, Secretary of State Ron Thornburgh predicted a turnout of 820,000 votes, or 51%.

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Published by the office of

**Secretary of State  
Ron Thornburgh**

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# Hartenbower Reports on Macedonia Election

*Lyon County clerk Karen Hartenbower served as an election observer in the Macedonia election in September. Her trip spanned the period September 9 to 18, 2002. Following is her report.*

Monitoring the Macedonia election was Albania revisited without the security risk and without as much fraud. There were 800 people from around the world to monitor the election.

I was deployed to the mountains again, region 6 - Zajas. Many of the things I observed were the same as in Albania. A poor country with many problems but a populace that was determined to vote.

The interesting thing that I noticed was the concern that everyone is able to vote. The requirements were that they are residents, 18 years of age and "able to hold a job" (mental ability). Some of the older women were illiterate. All campaign material had the party logo and a number circled. This way people could memorize a symbol. The number that was circled was the number that party would be on the ballot. To vote for their party they circled the number or the logo. Those who could not write their name on the registration list used their right index finger to place their finger print beside their name.

There is no campaigning allowed dur-

ing the last 24 hours before the election. Their elections are held on Sundays so no one has to take off work. Friday night they were sure busy. They had spray painted anything they could, buildings, houses, streets, sidewalks, shrubbery, etc. They hung banners high (so no one could reach them) on light poles by the polling stations. So much for their law about no campaigning within 200 yards of polling station.

Their pollworker training was on the television. It seemed everyone had a satellite dish, even the poorer homes. Each pollworker has a deputy in case they are unable to work or have to leave. In many of the stations there were deputies helping all day too.

There was still some family voting, especially the older women. They usually had their husband or one of their children mark their ballots. There was one man who came in with his wife and two daughters and he voted all four ballots.

The station we finished with had 87% turnout but the country as a whole had

70% turnout. In Macedonia you vote only for the party. The party that wins fills all the positions. Out of the over 800 ballots cast at the station we finished with only two ballots that were not for the party that won. The Socialist Party won and beat the Prime Minister's party. They were all happy about that. One ballot was spoiled (they voted for 2 parties) and the other was for another party.

There was some fraud in other parts of Macedonia but I did not see any. When we had our debriefing it was reported in one station there were 273 more ballots voted than signatures. Another reported the practice of the 'Bulgarian Train': a voter comes in and gets his ballot, goes into the booth, removes a voted ballot from his clothes, puts the unvoted ballot in his clothes and deposits the previously voted ballot in the ballot box. Then he takes the blank ballot back to let someone vote it for the next person.

If anyone ever has the opportunity to be an observer for a foreign election I would highly recommend it.

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## Reform

From page 1

at the grassroots level and other secretaries of state to help move the bill through the legislative process. His input and support was crucial to the success of this legislation, and the people of Kansas should be proud to have him as their secretary of state."

During the signing ceremony, President Bush commented, "When problems arise in the administration of elections, we have a responsibility to fix them. Every registered voter deserves to have confidence that the system is fair and elections are honest, that every vote is recorded, and that the rules are consistently applied. The legislation I sign today will add to the nation's confidence."

The 161-page bill contains many provisions, including authorization for federal funding to replace outdated voting equipment and to upgrade voter registra-

tion systems and improve training of election officers and education of voters, provide for more efficient administration at the federal level, set uniform standards for voting equipment, improve voting procedures at polling places, recruit poll workers, and provide identification of first-time voters. Many details are to be worked out later.

The Election Center is coordinating with the National Association of State Election Directors to conduct a training seminar for state officials in San Francisco in December. Also, the National Association of Secretaries of State is conducting joint training sessions with the National Conference of State Legislatures in Washington, D.C. and Denver, Colorado. Information from those meetings will be used to begin discussions in Kansas on how to implement the new law during the next four years.

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## History

From page 6

election reform bill. Each state will be required to upgrade to an automated, integrated system that automatically updates the central registry. When a county election officer adds, deletes or changes a record, the system will automatically update the SOS' CVR file, eliminating the need for quarterly submission of each county's file. The new requirements will represent a shift of some control from county to state level, but it will at the same time provide more consistency in the data.

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## SOS Holiday Hours

The Secretary of State's office will be closed on Wednesday, December 25 for the Christmas holiday. On the afternoon of December 24 the office will be open but minimally staffed. The office will also be closed on Wednesday, New Year's Day, January 1, 2003. Happy Holidays!

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# Statewide Recount Narrowly Averted in Attorney General Race

Kansans nearly witnessed their first recount of a statewide election in recent history. The race for Attorney General was extremely close on election night, which focused attention on the county canvasses and the counting of provisional ballots the Friday and Monday after the November 5 election.

Election night results showed Republican candidate Phill Kline with a 3,010 vote margin over Democratic candidate Chris Biggs—406,353 to 403,343, which is a near dead heat with 50% for each candidate.

The closeness of the race brought intense scrutiny of the county canvass and provisional ballots by the media, public and political parties, not to mention the candidates and campaigns. The campaigns appointed authorized poll agents and attorneys across the state to attend as many county canvasses as possible in an attempt to protect their candidates' interests and to gather information to help them decide whether to request a recount. Reportedly, a number of counties who usually have no one attending their canvasses had observers carefully watching their every move and every decision made on a provisional ballot.

The provisional ballots were the focus of special attention because there were nearly 15,000 of them statewide, and if most of them were valid, they could have possibly overcome the 3,010 vote margin held by Phill Kline.

One hundred counties began their canvasses on Friday, November 8, and five began on the following Monday. Some delayed completion of their canvasses until Tuesday because of the Veterans Day holiday on Monday, November 11.

The Secretary of State requested each county election officer to report the results of their canvass as soon as the canvass was completed. When the results were finalized early Tuesday afternoon, November 12, Kline had 412,686 votes to Biggs' 408,390, a margin of 4,296, a gain of 1,286 in the margin between the candidates.

Because Attorney General is a state office, the results were not considered official until the meeting of the state board of canvassers at the end of November.

Candidate Chris Biggs filed an official request for a recount

on Monday, November 11, requesting that Sedgwick and Shawnee counties conduct hand recounts and the other 103 counties conduct the recount using the same method originally used to count the ballots (optical scan, electronic or hand counted paper ballots). However, when the counties' canvassed results were complete and posted by the Secretary of State, Biggs filed a written withdrawal of his request for a recount.

If the recount had been conducted, it would have been done with new procedures written into the law in 2001 in the wake of the 2000 presidential election. Many states overhauled their recount procedures after the so-called Florida experience in the Bush-Gore election. Recount procedures in Kansas were fine tuned, but no overhaul was needed. The new provisions that would have been in effect in a Kline-Biggs recount were that the candidate in a multi-county or statewide race can make a single request to the Secretary of State rather than contacting each county. The Secretary of State then coordinates the procedure with the counties, including collecting cost estimates to determine the amount of the bond posted by the candidate. The type of recount Biggs had requested was estimated to cost approximately \$50,000 statewide.

Another new provision was that if a recount was requested and the margin between the candidates was 0.5% or less, the state reimbursed the counties for the cost of conducting the recount using the same ballot counting method as was originally used, as Biggs had requested in 103 counties. This became moot when the canvassed margin grew to 0.523%. If the margin had remained less than 0.5%, Biggs would have been liable only for the costs of the hand recounts in Sedgwick and Shawnee counties.

The Kline-Biggs race for Attorney General was one of the closest statewide races in the past 15 years in Kansas. In the 1990 Attorney General race, Republican Bob Stephan received 386,989 votes to Democrat Bert Cantwell's 382,691, a difference of 4,298, or 0.56 %. Also in 1990, in the race for state Commissioner of Insurance, Republican Ron Todd received 378,552 votes to Democrat Paul Feleciano's 373,804, a difference of 4,748, or 0.63 %.

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## Ensley's Election Eatin's

Our own Elizabeth (Libby) Ensley, Shawnee County election commissioner, was featured in a October 30 story in the Topeka *Capital-Journal* for her election day recipes. Entitled "Pollworkers' Delight," the story focused on the buffet she maintains in her office throughout election day for office staff and poll workers to enjoy.

Consider these enticing samples: Election Cake—modeled on the famous Hartford Election Cake; Board Worker Salad—invented by Sara Hischke, an election board worker; Patriotic Pie—containing mincemeat and that all-American food, apples;

Cleveland's Choice—a vanilla cream candy named after President Grover Cleveland; Susan B. Anthony's Cream Biscuits with Cheese; U.S. Senate Bean Soup—similar to that served in the U.S. Senate cafeteria in Washington, D.C.; Early Morning Egg Casserole—emphasis on "early"—make it the night before; and Sugar Cookies shaped like the Statue of Liberty.

Ensley says her research indicates that election day food is a custom dating back to the early days of American nationhood. Election day was an event, and candidates and political parties provided voters with food and strong drink outside the polls. "That became a problem, and now we have laws about that," Ensley said. Anyone wishing to try the recipes can get them from Libby.

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## Election Standards Pass First Big Test

The Kansas Election Standards have now been in use for their first major primary and general elections. All reports received to date indicate that the Standards are a success in their main goals of providing guidelines to county election officers and others involved in the electoral process, and in promoting statewide consistency and uniformity of procedures.

The Standards were developed by the office of the Secretary of State and a task force of nine county election officers. They were formally adopted by the Kansas County Clerks and Election Officials Association on May 9, 2002 (see *Canvassing Kansas*, June 2002, p. 7).

Although it was obvious that the 2002 primary and general elections would be the first test of the Standards, little was it known how extensively they would be studied and applied. They received a true trial by fire in the first election after they were adopted.

First, there were several significant write-in campaigns for state offices. The districts involved covered 62 counties, and the write-in candidates' campaigns obtained and used excerpts from the standards on the topics of casting write-in votes, using write-in stickers, and determining voter intent in counting write-in votes.

Second, during the exceedingly close race for Attorney Gen-

eral, when it became apparent there was a chance of a statewide recount, members of the campaigns and both political parties used passages from the Standards dealing with recounts, canvassing, authorized poll agents and provisional ballots in preparing for their activities immediately after election day.

Both campaigns appointed poll agents and attorneys to cover as many of the county canvasses as possible to observe the proceedings and ensure that provisional ballots were handled appropriately and their candidates received all the legal votes to which they were entitled.

This created more interest than normal in the county canvasses, and more attendance, given the fact that county canvasses are often conducted with no observers.

Greater attention to procedures in ballot counting and canvassing since the 2000 election, plus adoption of the Election Standards, have greatly increased the level of consistency among Kansas counties.

There are still areas for improvement, but great strides have been taken. The involvement of so many more people this year as observers and agents will undoubtedly point up areas where more improvement is needed, and very likely there will be legislation proposed from various sources to address vague areas of the law that give rise to inconsistencies.

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## Thornburgh Sued by Natural Law Party

Secretary of State Ron Thornburgh was sued in federal court by the Natural Law Party of Kansas and the American Civil Liberties Union of Atlanta, Georgia. The suit, *Natural Law Party of Kansas v. Thornburgh*, was filed on August 22, 2002 in federal district court in Kansas City, Kansas. Thornburgh was represented by attorneys in the office of Kansas Attorney General Carla Stovall.

The Natural Law Party is not officially recognized in Kansas, and the lawsuit was not filed seeking court-ordered recognition. Rather, the complaint was that one of the state statutes governing the party recognition procedure was unconstitutional. The statute, K.S.A. 25-304, requires that political parties' names be limited to two words, one of which is the word party. Thus, the name "Natural Law Party" would not be allowed because it contains three words.

Although records are incomplete, research into the background of this statute indicates two possible reasons for the two-word limit on party names:

(1) It preserves ballot space.

(2) It prevents multiple nominations for the same candidate and prevents the fusion of separate political parties into one organization.

The statute dates to 1904 after William Jennings Bryan had received nominations of two parties for president. After that,

many states passed laws prohibiting multiple nominations so a candidate's name would not appear on the ballot more than once. Kansas took it one step further, limiting party names to one word besides the word party to prevent separate parties from fusing together to support a single candidate.

Secretary of State Thornburgh did not strenuously fight the Natural Law/ACLU lawsuit, reasoning that the courts probably would rule in favor of the plaintiffs due to the restrictive nature of the statute in question. He agreed to a temporary injunction, issued by the court on October 7, enjoining him from enforcing the two-word limit on party names in K.S.A. 25-304.

Thornburgh agreed to propose legislation to the Kansas Legislature in 2003 to remove this provision from the law. Plaintiffs agreed to assist in the effort to pass the legislation.

The Natural Law Party, operating out of Fairfield, Iowa, filed a petition with the Secretary of State's office on April 3, 2000 seeking official party recognition in Kansas. The petition was reviewed by the various county election officers, but it was ruled insufficient by the Secretary of State for the lack of an adequate number of valid signatures.

Thornburgh's office considers the filing of the lawsuit to be an indication that the party intends to file a new petition seeking official recognition, possibly before the 2004 election.

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# Six Counties Produce Spanish Voting Materials

Six counties in southwest Kansas—Finney, Ford, Grant, Haskell, Kearny and Seward—have completed their first major election with Spanish ballots, voting materials and oral language assistance for their Hispanic voters.

The county clerks in these counties were notified by a letter from the U.S. Department of Justice on July 26, 2002 that their counties were required to participate based on the results of the 2000 U.S. Census (see *Canvassing Kansas*, September 2002, p. 1).

Because July 26 was less than two weeks before the August 6 primary election, the counties were unable to build a complete program of compliance for the primary, but full compliance was required for the November 5 general election.

The three main components of the program are to provide:

(1) bilingual ballots with everything that normally appears on the ballot in English also printed beside or below it in Spanish,

(2) all voting materials translated into Spanish, including newspaper publications, outreach materials, Voter's Rights and Responsibilities posters, voter registration forms, and ballot application forms, and

(3) paid translators to give oral language assistance to voters at polling places on election day, during advance voting, and during voter registration.

To accomplish these goals, the county election officers were required to pursue an aggressive community outreach campaign. They identified Spanish media outlets, including newspapers, radio and television stations, and numerous Hispanic groups that could help spread the word of the campaign and identify possible translators to work on election day. High schools and community colleges were contacted to provide bilingual poll workers. Churches and major employers were helpful in disseminating information through newsletters and bulletin board postings.

The Kansas Advisory Committee on Hispanic Affairs, based in Topeka, provided valuable assistance in the form of translating ballots and voting materials and recruiting bilingual workers and translators. The KACHA executive director, Tina DeLaRosa, and southwest regional representative Robert DeLeon were instrumental in the success of the program. DeLeon traveled extensively throughout the six counties to find Hispanic community contacts and translators. DeLeon also attended several of the training sessions for supervising judges to explain the purpose behind the program and to provide sensitivity training.

The Secretary of State's office helped coordinate the various groups involved: the six county election officers and their commissioners, counselors and adminis-

trators, representatives from the Department of Justice, and KACHA.

Two planning meetings were held in southwest Kansas during the project: the first in Liberal on August 22, and the second in Dodge City on October 29. Numerous phone calls, faxes and emails were exchanged during the three-month planning period to keep the project moving forward.

Once a county is identified by the census and required to conduct bilingual elections, the rules are in place for all elections conducted in that jurisdiction. Failure to do so would most likely result in a federal lawsuit filed by the Department of Justice. Based on the demographics of recent years in Kansas, it is possible that additional counties will be added to the list after the 2010 census.

Secretary of State Ron Thornburgh wishes to commend the following county election officers and their staffs for their efforts in successfully complying with the various requirements of this new duty: Carol Brown, Finney County; Vicki Wells, Ford County; Linda McHenry, Grant County; Sharon Hinkle, Haskell County; Jana Swank, Kearny County; Stacia Long, Seward County.

Thornburgh also extends his appreciation to Tina DeLaRosa and Robert DeLeon of KACHA for their efforts.

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## Clarification of Voter History on Registration File

It takes constant effort to maintain the voter registration database. Each county election officer must devote a certain amount of office time and resources to keeping the registry up to date and accurate, and considerable effort is made by the Secretary of State's office in maintaining the statewide file. Questions concerning voter history on the file have arisen recently, partly due to programming changes made in the past few years (inactive and suspended voters, address restriction) and partly due to misunderstandings based on inadequate communication from the SOS office.

The recent questions about voter history concern exactly what should be included: When should an entry be made in a voter's history records? Should advance ballot applicants who do not return their ballots be included? Should voters who cast invalid ballots be included?

The policy we want to follow is to include all voters who submitted ballots at a given election. It is the same as voter turnout.

Thus, an entry should be made in the voter history field for a voter who:

- voted at the polling place on election day
- submitted an advance ballot, either by mail or in person
- cast a provisional ballot, even if it was ultimately not counted
- cast a ballot that was eventually voided.

Voter history should not include a voter who applied for an advance ballot but did not return it.

Enhancements to the statewide centralized voter registration file (CVR) will be required by the recently passed federal

Please see **History**, page 3